

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1973-PST-E **TCEQ ID:** RN101733210 **CASE NO.:** 35061

RESPONDENT NAME: Matt Ray and Donnie Johnson

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Carrier Pkwy Texaco, 602 North Carrier Parkway, Grand Prairie, Dallas County</p> <p>TYPE OF OPERATION: Property with three inactive underground storage tanks ("USTs")</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondents have expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 26, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Steven Lopez, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-1896; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Matt Ray and Mr. Donald E. Johnson, Owners, Carrier Pkwy Texaco, 602 North Carrier Parkway, Grand Prairie, Texas 75050 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: November 16, 2007</p> <p>Date of NOV/NOE Relating to this Case: November 30, 2007</p> <p>Background Facts: This was a follow-up investigation conducted to determine compliance with violations for the out-of-service USTs which were noted in a previous investigation conducted on May 25, 2007.</p> <p>WASTE</p> <p>Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p>	<p>Total Assessed: \$7,875</p> <p>Total Deferred: \$1,575 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$175 (remaining \$6,125 due in 35 monthly payments of \$175 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>CN603271032 and CN603271024</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondents to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, permanently remove the UST system from service; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): 41914



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	3-Dec-2007	Screening	6-Dec-2007	EPA Due	
	PCW	7-Dec-2007				

RESPONDENT/FACILITY INFORMATION			
Respondent	Matt Ray and Donnie Johnson		
Reg. Ent. Ref. No.	RN101733210		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35061	No. of Violations	1	
Docket No.	2007-1973-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Steven Lopez	
Multi-Media		EC's Team	Enforcement Team 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Reduction **Subtotal 5**

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/> X	(mark with x)

Notes

Total EB Amounts **0% Enhancement*** **Subtotal 6**
 *Capped at the Total EB \$ Amount
Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 6-Dec-2007

Docket No. 2007-1973-PST-E

PCW

Respondent Matt Ray and Donnie Johnson

Policy Revision 2 (September 2002)

Case ID No. 35061

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101733210

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Steven Lopez

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with the same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 6-Dec-2007	Docket No. 2007-1973-PST-E	PCW
Respondent Matt Ray and Donnie Johnson	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35061	<i>PCW Revision November 6, 2007</i>	
Reg. Ent. Reference No. RN101733210		
Media [Statute] Petroleum Storage Tank		
Enf. Coordinator Steven Lopez		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 334.47(a)(2)	
Violation Description	Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.	
Base Penalty		\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
Potential	x	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

\$2,500

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	x
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Three monthly events (one per tank) are recommended from the November 16, 2007 investigation date to the December 6, 2007 screening date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$4,732"/>	Violation Final Penalty Total <input type="text" value="\$7,875"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$7,875"/>	

Economic Benefit Worksheet

Respondent Matt Ray and Donnie Johnson
Case ID No. 35061
Reg. Ent. Reference No. RN101733210
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	6-Jun-2008	9.5	\$4,732	n/a	\$4,732

Notes for DELAYED costs

The estimated cost to permanently remove the UST system from service. The Date Required is the date the Respondents were required to upgrade the UST system and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$4,732

Compliance History

Customer/Respondent/Owner-Operator:	CN603271032 JOHNSON, DONNIE	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN101733210 CARRIER PKWY TEXACO	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		41914
Location:	602 N. CARRIER PKWY, GRAND PRAIRIE, TX,75050		Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	December 07, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 07, 2002 to December 07, 2007		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Steven Lopez Phone: 512-239-1896

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	05/25/2007	(561660)
2	11/28/2007	(608945)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/24/2007	(561660)
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)	
Description:	Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.	
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas. NA

CONFIDENTIAL

Compliance History

Customer/Respondent/Owner-Operator:	CN603271024 RAY, MATT	Classification: AVERAGE	Rating: 1.50
Regulated Entity:	RN101733210 CARRIER PKWY TEXACO	Classification: AVERAGE	Site Rating: 1.50
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	41914
Location:	602 N. CARRIER PKWY, GRAND PRAIRIE, TX, 75050		Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	December 07, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 07, 2002 to December 07, 2007		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Steven Lopez Phone: 512-239-1896

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	05/25/2007	(561660)
2	11/28/2007	(608945)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	05/24/2007	(561660)
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 334, SubChapter C 334.47(a)(2)	
Description:	Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.	
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A

Sites Outside of Texas. NA

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MATT RAY AND DONNIE JOHNSON
RN101733210

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-1973-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Matt Ray and Donnie Johnson ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own property with three inactive underground storage tanks ("USTs") at 602 North Carrier Parkway in Grand Prairie, Dallas County, Texas (the "Facility").
2. The Respondents' three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violation alleged in Section II ("Allegations") on or about December 5, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Eight Hundred Seventy-Five Dollars (\$7,875) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Hundred Seventy-Five Dollars (\$175) of the administrative penalty and One Thousand Five Hundred Seventy-Five Dollars (\$1,575) is

deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

The remaining amount of Six Thousand One Hundred Twenty-Five Dollars (\$6,125) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Seventy-Five Dollars (\$175) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondents fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondents to meet the payment schedule of this Agreed Order constitutes the failure by the Respondents to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owners of the Facility, the Respondents are alleged to have failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2), as documented during an investigation conducted on November 16, 2007.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Matt Ray and Donnie Johnson, Docket No. 2007-1973-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, permanently remove the UST system from service, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Manager, Waste Section
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents.
5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sroogier
For the Executive Director

5/5/2008
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Matt Ray
Signature

3-12-08
Date

Matt Ray
Name (Printed or typed)
Authorized Representative of
Matt Ray

CO-OWNER
Title

Donald E. Johnson
Signature

3 12 08
Date

Donald E Johnson
Name (Printed or typed)
Authorized Representative of
Donnie Johnson

CO OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

